

REMARKS

This Response is submitted in reply to the non-final Office Action mailed on December 17, 2008. A petition for a one-month extension of time and a Terminal Disclaimer are submitted herewith. The Director is authorized to charge the amount of \$130.00 for the cost of the one-month extension of time, \$130.00 for the cost of the Terminal Disclaimer, and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-665 on the account statement.

Claims 1-32 are pending in this application. In the Office Action, Claims 1-32 are rejected for nonstatutory double patenting. Claims 1-3, 19-21 and 26-32 are further rejected under 35 U.S.C. §102. Claims 4-18 and 22-25 are objected to as being dependent on rejected base claims. For at least the reasons set forth below, Applicants respectfully submit that the rejections and objection should be withdrawn.

In the Office Action, Claims 1-3, 19-21 and 26-32 were rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 7,340,990 B2 to Halliday et al. ("Halliday"). In response, Applicants respectfully submit that the cited reference is not proper prior art for at least the reasons set forth below.

Applicants respectfully submit that *Halliday* is not proper prior art under 35 U.S.C. §102(e). The French priority application in this case was filed on March 24, 2003. The earliest possible United States filing date of *Halliday* is April 11, 2003, the filing date of Provisional Application No. 60/462,538. The MPEP expressly states that "the foreign priority date of the reference under 35 U.S.C. 119(a)-(d)[,] (f), and 365(a) cannot be used to antedate the application filing date. In contrast, applicant may be able to overcome the 35 U.S.C. 102(e) rejection by proving he or she is entitled to his or her own 35 U.S.C. 119 priority date which is earlier than the reference's U.S. filing date" See, MPEP, Section 2136.03 (2009). As such, even if the provisional application provides support for the subject matter relied on in *Halliday*, *Halliday* is not prior art under 35 U.S.C. §102(e). Applicants are submitting herewith a certified English language translation of the French priority document in this case. Applicants respectfully submit that the French priority document provides support for the present claims. Therefore, Applicants respectfully submit that the certified English translation has been properly made of record and that *Halliday* cannot be applied as prior art in this case.

Accordingly, Applicant respectfully requests that the rejection of Claims 1-3, 19-21 and 26-32 under 35 U.S.C. §103(a) to *Halliday* be reconsidered and withdrawn.

In the Office Action, Claims 1-32 are rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-21 of U.S. Patent No. 7,377,454. Applicants have elected to overcome the double patenting rejection through the enclosed Terminal Disclaimer. Such election shall not be deemed an admission as to the propriety or accuracy of the Patent Office's conclusions or rejections.

Accordingly, Applicants respectfully request that the rejection of Claims 1-32 under obviousness-type double patenting be withdrawn.

Furthermore, the Patent Office asserts that Claims 4-18 and 22-25 are objected to as being dependent upon rejected base claims but would be allowable if rewritten in independent form. See, Office Action, page 3, lines 20-22. In response, Applicants respectfully submit that the rejection of independent Claims 1, 11 and 20-21 from which Claims 4-18 and 22-25 depend is improper because, as discussed previously, *Halliday* is not proper prior art under 35 U.S.C. §102(e).

Accordingly, Applicants respectfully request that the objection to Claims 4-18 and 22-25 be withdrawn

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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